

Prepared by:
Walter W. Hays, Jr.
Fortson, Bentley and Griffin, P.A.
440 College Avenue, Suite 220
Athens, Georgia 30601
706-548-1151

1/10/05 11:05:12
BK 106 PG 572
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

PREMISES LOCATION: 761 Goodman Road, Horn Lake, Mississippi

THIS AGREEMENT is made and entered into as of this 9th day of August, 2004 by and among **DIXIE CHICKEN, LLC**, a Georgia limited liability company, whose principal address is P. O. Box 1983, Athens, Georgia 30606 (the "**Landlord**"), **OXFORD FOODS, INC.**, a Mississippi corporation, whose principal address is 1091 Founder's Boulevard, Suite D, Athens, Georgia 30606 (the "**Tenant**"), **ZAXBY'S FRANCHISING, INC.**, a Georgia corporation, whose principal address is 1040 Founder's Boulevard, Suite 100, Athens, Georgia 30606 (the "**Optionee**"), and **BRANCH BANKING AND TRUST COMPANY**, whose principal address is 950 East Paces Ferry Road, Suite 2575, Atlanta, Georgia 30326 (the "**Lender**").

W I T N E S S E T H:

THAT WHEREAS, Landlord has entered into and delivered that certain Deed of Trust dated April 22, 2004, in favor of Lender, which has been recorded in the Office of the Chancery Clerk of DeSoto County, Mississippi in Deed Book 1973, page 0787 (the "Mortgage") conveying certain property therein described located at 761 Goodman Road, Horn Lake, Mississippi (the "Premises"); and

WHEREAS, Landlord and Tenant entered into that certain lease agreement dated April 22, 2004 (the "Lease") for the Premises for use by Tenant as a Zaxby's® restaurant to be operated pursuant to a written License Agreement dated June 18, 2003 by and between Optionee and Tenant (the "License Agreement"); and

WHEREAS, it is a condition to Optionee's confirmation of the Lease, as required under the License Agreement, that this Agreement be fully executed and delivered by the parties hereto;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do mutually covenant and agree as follows:

1. Lender hereby consents to the Lease.
2. Tenant covenants and agrees with the Lender that the Lease is hereby made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage (as same may be modified and extended) subject to the provisions of this Agreement.

3. Tenant certifies that the Lease is presently in full force and effect.

4. Lender agrees that so long as the Lease shall be in full force and effect and Tenant is not in default thereunder beyond any applicable cure period:

(a) Except as required by applicable law governing foreclosures and/or sales pursuant to power of sale, Tenant shall not be named or joined as a party defendant or otherwise in any suit, action, or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby.

(b) The possession by Tenant of the Premises and the Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise adversely affected by (i) any suit, action or proceeding upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage or any other documents held by the Lender, or (ii) any judicial sale or execution or other sale of the Premises, or by any deed given to Lender by any other documents or as a matter of law, or (iii) any default under the Mortgage or the bond or note or other obligation secured thereby.

5. If Lender shall become the owner of the Premises by reason of foreclosure of the Mortgage or otherwise, or if the Premises shall be sold as a result of any action or proceeding to foreclose the Mortgage or by a deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant, as Tenant thereunder, and the then owner of the Premises, as Landlord thereunder, upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

(a) Tenant shall be bound to the Lender or to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the option periods if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as Landlord under the Lease; and

(b) If Tenant is not in default under the Lease beyond any applicable cure period, such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the option periods, if Tenant elects or has elected to exercise its options to extend the term) which terms, covenants and provisions such new owner hereby agrees to assume and perform, provided, however, that Lender or any successor or assignee of Lender shall not (i) be bound by any prepayment of rent or additional rent, unless received and receipted for by Lender or its successor or assignee; (ii) be personally liable under the Lease, and Lender's or its successor's or assignee's liability under the Lease shall be limited to the interest of the Lender or its successor or assignee in the Premises; (iii) be liable for any act or omission of any prior landlord under the Lease, including, without limitation, the Landlord, except for any continuing act or omission of which Lender had notice and failed to cure; (iv) be subject to any offsets or defenses which Tenant may have against any prior landlord under the Lease, including, Landlord, except for any offsets or defenses related to any continuing act or omission of which Lender has had notice and failed to cure; (v) except as provided in Section 8. below, be bound by any amendment, modification or termination of the Lease (other than a termination of the Lease by Tenant pursuant to the express terms of the Lease) made without Lender's prior written consent; and (vi) be liable to provide Tenant with any rights in or be bound by or be responsible for any restrictions on any property other than the Premises during the remainder of the term of the Lease.

6. Tenant, Landlord, and Lender acknowledge and agree that upon written instruction to Tenant from the Landlord or Lender instructing Tenant to make all rent and other payments due and to become due to Landlord under the Lease directly to Lender, the Tenant agrees to follow such direction until further written notice from the Lender, and Landlord and Lender hereby expressly agree that any such payment shall discharge any obligation of Tenant to Landlord under the Lease to the extent of such payment; provided, however, that the foregoing shall have no effect on Tenant's rights to any offsets nor any effect on Landlord's obligations.

7. Tenant shall give Lender written notice of any default by Landlord under the Lease. Lender shall have the same period of time provided Landlord under the Lease within which to cure such default.

8. Landlord and Tenant may, from time to time, modify or amend the Lease without Lender's consent, provided such modifications or amendments do not result in a change in the Lease Term, the reduction of the Rent payable thereunder or make Landlord's obligations thereunder more onerous; any such modifications having such result and made without Lender's written consent shall be void and of no force and effect as between Lender and Tenant.

9. Tenant shall not pay an installment of rent more than thirty (30) days prior to the due date.

10. Landlord, Tenant and Optionee have entered into, or are about to enter into, a certain Option Agreement whereby Optionee is granted the right and option to become the tenant of the Premises and continue the operation of a Zaxby's® restaurant (now or to be located thereon) in the event Tenant should, for any reason, cease to be the tenant of the Premises, or in the event the License Agreement should ever, for any reason, be terminated or expire. Accordingly, this Agreement shall inure to the benefit of Optionee, its successors and assigns, in the event Optionee should ever become tenant of the Premises.

11. Any notices or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, (a) if to Lender, at the address of Lender hereinabove set forth or at such other address as Lender may designate by notice, (b) if to Tenant, at the address of Tenant hereinabove set forth, or at such other address as Tenant may designate by notice, (c) if to Landlord, at the address of Landlord hereinabove set forth or at such other address as Landlord may designate by notice, or (d) if to Optionee, at the address of Optionee hereinabove set forth or at such other address as Optionee may designate by notice.

This Agreement may be executed in one or more counterparts, or by the parties executing separate counterpart signature pages, including facsimiles transmitted by telecopier, all of which shall be deemed to be original counterparts of this Agreement.

This Agreement shall be governed by, and construed in accordance with, the laws of the state in which the Premises are located.

This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.

This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

This Agreement and the covenants contained are intended to run with and bind all lands affected thereby.

IN WITNESS WHEREOF, the parties hereby have set their hands and seals as of the day and year first above written.

LANDLORD:

DIXIE CHICKEN, LLC

By: WINTOM, LLC, Member

By: [Signature] (SEAL)
Name: Thomas W. Scott, III
Title: Authorized Member

By: [Signature] (SEAL)
Name: A. Gary Avants
Title: Member

Signed, sealed and delivered
in the presence of:

[Signature]
Witness

[Signature]
Witness

STATE OF Georgia
COUNTY OF MADISON

Personally appeared before me, the undersigned authority in and for the said county and state, on this 24 day of July, 2004, within my jurisdiction, the within named Thomas W. Scott, III as Authorized Member of Wintom, LLC and A. Gary Avants, who acknowledged that they are Members of Dixie Chicken, LLC, a Georgia limited liability company, and that for and on behalf of the said company, and as its act and deed they executed the above and foregoing instrument.

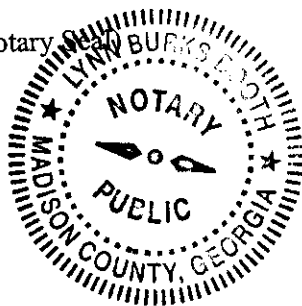
[Signature]

Notary Public

My commission expires: _____

Notary Public, Madison County, Georgia
My Commission Expires January 22, 2006

(Notary Seal)



252028.1
007927-0217

TENANT:

OXFORD FOODS, INC.

By: [Signature]
 Name: A. Gary Avants
 Title: President

Signed, sealed and delivered
 in the presence of:

[Signature]
 Witness
[Signature]
 Witness

[CORPORATE SEAL]

STATE OF Georgia
 COUNTY OF Oconee

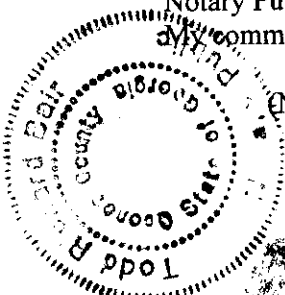


Personally appeared before me, the undersigned authority in and for the said county and state, on this 27th day of July, 2004, within my jurisdiction, the within named A. Gary Avants, who acknowledged that he is President of Oxford Foods, Inc., a Mississippi corporation, and that for and on behalf of the said corporation, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

Todd Richard Bair

Notary Public
 My commission expires: TODD RICHARD BAIR
Notary Public, Oconee County, Georgia
My Commission Expires July 8, 2007

(Notary Seal)



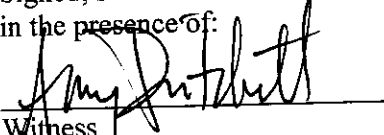
OPTIONEE:

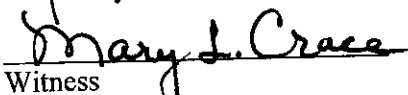
ZAXBY'S FRANCHISING, INC.

By: 
 Name: Tony D. Townley
 Title: Vice President

[CORPORATE SEAL]

Signed, sealed and delivered
 in the presence of:


 Witness


 Witness

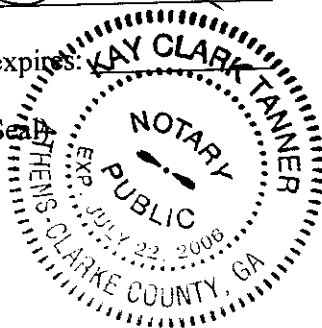
STATE OF GEORGIA
 COUNTY OF OCONEE

Personally appeared before me, the undersigned authority in and for the said county and state, on this 9 day of August, 2004, within my jurisdiction, the within named Tony D. Townley, who acknowledged that he is Vice President of Zaxby's Franchising, Inc., a Georgia corporation, and that for and on behalf of the said corporation, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.


 Notary Public

My commission expires:

(Notary Seal)



LENDER:

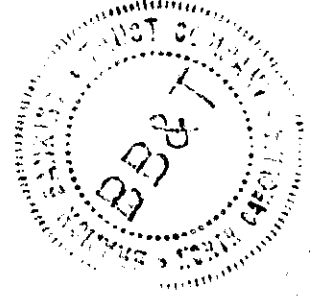
BRANCH BANKING AND TRUST COMPANY

By: [Signature]

Name: Dale Ingle

Title: AVP

[CORPORATE SEAL]



Signed, sealed and delivered
in the presence of:

[Signature]
Witness

[Signature]
Witness

STATE OF Georgia
COUNTY OF Cherokee

Personally appeared before me, the undersigned authority in and for the said county and state, on this 24 day of December, 2004, within my jurisdiction, the within named Dale Ingle, who acknowledged that (he) (she) is AVP of Branch Banking and Trust Company, and that for and on behalf of the said corporation, and as its act and deed (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

[Signature]
Notary Public
My commission expires: 01/15/06

(Notary Seal)

